STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 15, 2013
v	No. 311531 Saginaw Circuit Court
JEREMY CALEB HATFIELD, Defendant-Appellant.	LC No. 11-036325-FC

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Following a jury trial, defendant was acquitted of first-degree premeditated murder, but was convicted of first-degree felony murder, MCL 750.316(1)(b); possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; and carrying a dangerous weapon with unlawful intent, MCL 750.226. He was sentenced to a term of imprisonment of life without the possibility of parole for the felony-murder conviction, two years' imprisonment for the felony-firearm conviction, and two to five years' imprisonment for the carrying-a-dangerous-weapon-with-unlawful-intent conviction. Defendant appeals as of right. For the following reasons, we affirm defendant's convictions.

First, defendant argues that there was insufficient evidence to support his felony-murder conviction, because the prosecution failed to present sufficient evidence to support the predicate felonies of attempted larceny and torture. We disagree. A claim of insufficient evidence is reviewed de novo on appeal. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). Due process entitles defendant to have his conviction supported by sufficient evidence. *Jackson v Virginia*, 443 US 307, 315, 318-319; 99 S Ct 2781; 61 L Ed 2d 560 (1979), overruled on other grounds by *Schlup v Delo*, 513 US 298; 115 S Ct 851; 130 L Ed 2d 808 (1995). "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended on other grounds 441 Mich 1201 (1992).

The prosecution proceeded against defendant on an aiding and abetting theory. To prove felony murder under an aiding and abetting theory, the prosecution must show that the defendant

> (1) performed acts or gave encouragement that assisted the commission of the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of the predicate felony. [*People v Bulls*, 262 Mich App 618, 624; 687 NW2d 159 (2004) (quotation and citations omitted).]

In this case, the prosecution charged defendant with felony murder based on two alternate predicate felonies reflected in MCL 750.316(1)(b): attempted larceny and torture. Defendant does not contest the first two elements of felony murder.[1] Rather, defendant only argues that the prosecution failed to show that defendant had the requisite intent to commit, or aid and abet another to commit, attempted larceny and torture. To show that defendant aided and abetted attempted larceny and torture, the prosecution was required to prove that (1) defendant or another person committed the crime, (2) defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) defendant intended the crime's commission or had knowledge that the principal intended its commission at the time that defendant aided or encouraged the crime. *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006). "An aider and abettor's state of mind may be inferred from all the facts and circumstances[,]" including "a close association between the defendant and the principal, the defendant's participation in the planning or execution of the crime, and evidence of flight after the crime." *People v Carines*, 460 Mich 750, 758; 597 NW2d 130 (1999).

First, with regard to attempted larceny, "an 'attempt' consists of (1) an attempt to commit an offense prohibited by law, and (2) any act towards the commission of the intended offense." *People v Thousand*, 465 Mich 149, 164; 631 NW2d 694 (2001). "Larceny is the taking and carrying away of the property of another, done with felonious intent and without the owner's consent." *People v Malach*, 202 Mich App 266, 270; 507 NW2d 834 (1993). "[T]he specific intent necessary to commit larceny is the intent to steal another person's property." *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999). "Larceny is not limited to taking property away from the person who holds title to that property, but also includes taking property from a person who has rightful possession and control of the property." *People v Sheldon*, 208 Mich App 331, 334; 527 NW2d 76 (1995).

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[1] Nevertheless, we conclude that there was sufficient evidence to establish that defendant performed acts or gave encouragement to assist in the killing and had the requisite intent. Three witnesses identified defendant as an assailant who assaulted the victim and two of those witnesses implicated defendant as the one who shot the victim. Defendant's participation in the assault, coupled with his act of shooting the victim, infer his intent to kill. See *Bulls*, 262 Mich App at 627 (stating that "malice can be inferred from the use of a deadly weapon). Even if defendant was not the one who shot the victim, a rational jury could infer that defendant, at the very least, aided and abetted the killing by his participation in the assault, which establishes the underlying felonies as discussed below. See *People v Carines*, 460 Mich 750, 759-760; 597 NW2d 130 (1999).

The victim's friend, who was with the victim that evening, testified that he believed the assailants, which testimony showed included defendant, tried to rob the victim. The assailants approached the victim from behind, and the victim's friend heard one of the assailants say "Where's it at, man?" Another witness testified that one of the assailants lifted up the victim's shirt to search him for a gun, and she heard one assailant say, "He ain't got it." There was also testimony that the assailants punched and kicked the victim after slamming him to the ground. Whether the three assailants were ultimately successful in stealing the victim's property is insignificant because the assault, coupled with the lifting of the victim's shirt and searching of his person, were sufficient acts toward the commission of the larceny. See *Thousand*, 465 Mich at 164. Based on these facts, a jury could reasonably infer that the search for a gun was the intended purpose of the assault and defendant's participation in the assault showed an intent to steal the victim's property. Thus, the prosecution presented sufficient evidence to show that defendant aided and abetted in the crime of attempted larceny.[2]

Next, with regard to the crime of torture, MCL 750.85 reads in relevant part:

> (1) A person who, with the intent to cause cruel or extreme physical or mental pain and suffering, inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control commits torture and is guilty of a felony punishable by imprisonment for life or any term of years.
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> (2) As used in this section:
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> (a) "Cruel" means brutal, inhuman, sadistic, or that which torments.
>
> (b) "Custody or physical control" means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority.
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> (c) "Great bodily injury" means either of the following:
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> * * *
>
> (*ii*) One or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds.

[2] Defendant argues that there was testimony that the three assailants only intended to recover a 9-milimeter handgun that the victim had wrongfully possessed. It is true that recovery of wrongfully possessed property would not constitute a larceny, *Sheldon*, 208 Mich App at 334; however, this testimony was inconsistent with the testimony of another witnesses, and it does not mean that the prosecution did not present sufficient evidence of larceny, as it is the jury's role to determine the credibility of the competing stories, and this Court must resolve any conflicts in the prosecution's favor. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Three witnesses identified defendant as one of the three assailants who physically assaulted the victim with punches and kicks for an extended period of time, and two of those witnesses also implicated defendant as the shooter. One witness estimated the assault to have lasted for a half hour. While this is likely excessive, the testimony nevertheless showed that the assault lasted for more than a few seconds. Further, the medical examiner testified at length about the severe physical injuries, including bruises and broken bones that were suffered by the victim during the assault. A reasonable jury could conclude that, given defendant's participation in the extended beating of the victim and his alleged shooting of the victim, defendant intended to cause extreme physical pain and suffering, with great bodily injury resulting. Thus, the prosecution submitted sufficient evidence to show that defendant aided and abetted in the crime of torture.[3]

Accordingly, based on the foregoing, there was sufficient evidence to establish defendant's felony-murder conviction.

Next, defendant argues that the trial court allowed the prosecution to introduce inadmissible hearsay statements of the codefendant, Corwin Roberson, under *Bruton v United States*, 391 US 123; 88 S Ct 1620; 20 L Ed 2d 476 (1968), and MRE 804(b)(3).

We review a trial court's decision to admit evidence for an abuse of discretion, but whether a statement is against penal interest presents a question of law that we review de novo. *People v Barrera*, 451 Mich 261, 268-269; 547 NW2d 280 (1996). Further, "the determination whether a reasonable person in the declarant's shoes would have believed the statement to be true . . . depend[s] in part on the trial court's findings of fact and in part on its application of the legal standard to those facts." *Id.* Findings of fact are reviewed for clear error. *Id.* at 269.

Defendant concedes that the statements at issue were nontestimonial and therefore not subject to the Confrontation Clause analysis in *Crawford v Washington*, 541 US 36, 59; 124 S Ct 1354; 158 L Ed 2d 177 (2004).[4] But defendant argues that under *Bruton*, the right of confrontation is violated where the prosecution introduces admissions made by a nontestifying codefendant during the defendant's trial. However, in *Bruton*, the United States Supreme Court held that the Confrontation Clause is violated when "a nontestifying codefendant's confession that inculpates the defendant is introduced at a *joint trial*." *People v Pipes*, 475 Mich 267, 269; 715 NW2d 290 (2006) (emphasis added). *Bruton* only applies in the context of a joint trial and only when the codefendant's statement is inadmissible against the defendant. See *Bruton*, 391 US at 137. In this case, there was no joint trial, and as will be discussed, the statements were

[3] It is true that the acts establishing the crime of torture were precisely the same acts that established the murder itself. However, Michigan law allows for a felony murder conviction in such circumstances. See *People v Magyar*, 250 Mich App 408, 411-412; 648 NW2d 215 (2002).

[4] Nontestimonial statements "do not implicate the Confrontation Clause and their admissibility is governed solely by MRE 804(b)(3)." *People v Taylor*, 482 Mich 368, 374; 759 NW2d 361 (2008) (citation omitted).

admissible against defendant pursuant to MRE 804(b)(3); thus, the trial court did not commit any error in failing to apply *Bruton* to the instant case.

Next, defendant argues that the hearsay statements were not admissible under the statement-against-interest exception to the hearsay rule, because they were not against his penal interest and in fact reduced Roberson's criminal culpability.[5] We disagree. MRE 804(b)(3) reads in relevant part as follows:

> (b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
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> * * *
>
> (3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Our Supreme Court has stated that "whether a declarant's statement was sufficiently against penal interest is whether the statement would be probative of an element of a crime in a trial against the declarant, and whether a reasonable person in the declarant's position would have realized the statement's incriminating element." *Barrera*, 451 Mich at 272.

In *People v Poole*, 444 Mich 151; 506 NW2d 505 (1993), abrogated on other grounds by *People v Taylor*, 482 Mich 368, 378; 759 NW2d 361 (2008), our Supreme Court provided guidance for determining whether a statement against penal interest is admissible when the statement is made by a codefendant and inculpates both the declarant and the defendant, as it did here:

> In evaluating whether a statement against penal interest that inculpates a person in addition to the declarant bears sufficient indicia of reliability to allow it to be admitted as substantive evidence against the other person, courts must evaluate the circumstances surrounding the making of the statement as well as its content.
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> The presence of the following factors would favor admission of such a statement: whether the statement was (1) voluntarily given, (2) made

[5] Defendant makes no argument regarding unavailability, and it appears from the record that the parties did not dispute that Roberson was unavailable to testify because he exercised his Fifth Amendment right not to testify.

> contemporaneously with the events referenced, (3) made to family, friends, colleagues, or confederates—that is, to someone to whom the declarant would likely speak the truth, and (4) uttered spontaneously at the initiation of the declarant and without prompting or inquiry by the listener.
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> On the other hand, the presence of the following factors would favor a finding of inadmissibility: whether the statement (1) was made to law enforcement officers or at the prompting or inquiry of the listener, (2) minimizes the role or responsibility of the declarant or shifts blame to the accomplice, (3) was made to avenge the declarant or to curry favor, and (4) whether the declarant had a motive to lie or distort the truth. [*Id.* at 165; see also *Taylor*, 482 Mich at 378.]

"While the foregoing factors are not exclusive, and the presence or absence of a particular factor is not decisive, the totality of the circumstances must indicate that the statement is sufficiently reliable to allow its admission as substantive evidence although the defendant is unable to cross-examine the declarant." *Poole*, 444 Mich at 165. In *Poole*, the Court held:

> [W]here, as here, the declarant's inculpation of an accomplice is made in the context of a narrative of events, at the declarant's initiative without any prompting or inquiry, that as a whole is clearly against the declarant's penal interest and as such is reliable, the whole statement—including portions that inculpate another—is admissible as substantive evidence at trial pursuant to MRE 804(b)(3). [*Id.* at 161.]

In making its decision, the trial court thoughtfully addressed the factors provided in *Poole*, and based on the totality of the circumstances, it determined that Roberson's statements were admissible as statements against interest. A review of the factors indicates that, based on the totality of circumstances, the statement was against Roberson's penal interest, and thus, admissible hearsay. Roberson's former cellmate testified that Roberson initiated the conversation regarding the incident. It was not until the cellmate learned about the incident that the thought crossed his mind that the information could help his own situation, so he admitted that after the initial conversation, he asked Roberson questions regarding the incident, and the two of them continued to discuss the incident on and off over a period of a week or two. Nevertheless, the cellmate testified that Roberson initiated the initial conversation in which Roberson told him about the entire incident. Although the statements were not made contemporaneously with the incident, they were made immediately after Roberson received notice that he was facing an open murder charge for the incident. Further, Roberson was likely to speak the truth to the cellmate, as the two shared a cell for 26 days and discussed many things, including crimes they had both committed. The cellmate described these conversations as "war stories." According to the cellmate, you develop a bond with a person when you are locked in a cell together. Moreover, although Roberson stated that defendant shot the victim, which defendant argues lessens Roberson's culpability, Roberson's statements made him equally culpable for the murder because Roberson told the cellmate that he gave his gun to defendant, who then shot the victim. See *People v Shafou*, 416 Mich 113, 133; 330 NW2d 647 (1982) ("Accomplices generally are punished as severely as the principal, on the premise that when a crime has been committed, those who aid in its commission should be punished like the

principal."). Roberson also told the cellmate that the incident began when Roberson started beating the victim up over another gun Roberson believed the victim had that belonged to Roberson. Finally, a review of the record does not indicate that Roberson made the statement to avenge defendant or that he had a motive to lie.

Roberson's incriminating statements that he initiated the assault and gave defendant the gun that was used to shoot the victim, so far tended to subject Roberson to criminal liability "that a reasonable person in the declarant's position would not have made the statement unless believing it to be true." MRE 804(b)(3). "[T]he statement's reliability flows from the postulate that a reasonable person will not incriminate himself by admitting a damaging fact unless he believes that fact to be true." *Barrera*, 451 Mich at 271-272. Further, given that Roberson admitted his involvement in the assault and murder, it is likely that a reasonable person in Roberson's position would have realized that the statements were incriminating, and would also be probative of an element of a crime in a trial against him.

Accordingly, based on the foregoing, the trial court did not abuse its discretion when it admitted Roberson's statements.

Affirmed.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens